IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jonathan D. Herbach, et al.   Art Unit   : 2433
Serial No. : 10/699,520   Examiner : Carl G. Colin
Filed   : October 31, 2003   Conf. No. : 4224

Title   : DISTRIBUTED DOCUMENT VERSION CONTROL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, the following is in response to the Examiner's Answer

dated June 23, 2010. The comments below are being presented in reply to the Response to

Argument section of the Examiner's Answer.

Claims 2-3, 6-8, 12-15, 24-27, 30, 39-41, 47-53, and 56

In the Examiner's Answer of June 23, 2010, the Examiner notes that Pitzel describes the

"client conditions" as including, among other things, "a user identification number that is

associated with the user."[1] However, the particular phrasing used here cannot be considered in a

vacuum, without considering the actual teachings of Pitzel. In fact, the additional portion of

Pitzel cited by the Examiner explicitly states:[2]

> In one embodiment of the invention, the client conditions are permanently
> stored in the client profile 128. In another embodiment of the invention, the client
> conditions are determined subsequent to each request by the user for one of the
> components 102. As will be appreciated by one of ordinary skill in the art, the
> client conditions can be obtained by a variety of methods. For example, in one
> embodiment of the invention, the user identification number can be a unique

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[1] *See* 06-23-2010 Examiner's Answer at page 18.
[2] *See* Pitzel at col. 9, lines 6-22, cited in 06-23-2010 Examiner's Answer at page 18 (emphasis added).

identifier that is associated with each <u>upgrade manager module</u> 124. In another

embodiment of the invention, the <u>user identification number</u> can be a unique

identifier that is associated with the <u>microprocessor of the client computer</u> 104. In

yet another embodiment of the invention, the unique identifier is a unique

identifier that is associated with the <u>operating system of the client computer</u> 104.

As is seen from the foregoing examples, each of the client conditions may be

derived from one or more of a variety of sources.

As these examples make clear, the "user identification number" in Pitzel corresponds to the

client "user" computer, <u>not</u> an identified user at the client computer. The Examiner is not free to

ignore the actual teachings of a reference when interpreting the terminology used in that

reference.

Furthermore, the fact that the "client conditions" also include a preferred language does

not change the proper interpretation of the user identification number in Pitzel. A computer can

have multiple users over time, all of whom may prefer to see help menus in French (as described

in Pitzel) because that computer is located in France. Thus, the fact that a preferred language is

included in the conditions tracked for a client computer does not indicate that a specific user has

been identified at that client computer. In other words, the language preference is still client-

computer specific, not user-specific.

In view of the foregoing reasons, it is clear that the proposed combination of Pitzel with

McGee fails to disclose each and every element as set forth in claim 2 of the present application.

Claims 24 and 39 recite subject matter similar to that discussed with respect to claim 2. Thus,

the arguments above are equally applicable to each of claim 24 and 39. Therefore, for at least

Applicant : Jonathan D. Herbach, et al.   Attorney's Docket No. 07844-0622001 / P571
Serial No. : 10/699,520
Filed   : October 31, 2003
Page   : 3

the above reasons, the rejection of claims 2-3, 6-8, 12-15, 24-27, 30, 39-41, 47-53, and 56 over

McGee and Pitzel (i.e., Grounds of Rejection I) should be overturned.

Claims 8, 48, and 53

In the Examiner's Answer of June 23, 2010, the Examiner maintains the rejection on the

basis that:[3]

> Examiner notes that McGee disclosing (see column 6, lines 51-67) permission
> to execute at a certain time of day, on certain devices is a restriction within the
> application itself and it is at a granularity smaller than the application when
> compared to the fact that the application is able to operate anytime and on any
> devices (i.e. without the restrictions).

However, the claim language at issue cannot read on the temporal restriction in McGee, as relied

upon by the Office. Rather, the claim language states that the document-permissions information

specifies access permissions at a level of granularity smaller than the distributed electronic

document within the distributed document. The plain meaning of this is that the document-

permissions information specifies access permissions to sub-portions of the document (e.g.,

controlling access to specific page(s), paragraph(s) and/or word(s) in the document). This cannot

read on controlling the time of day when an application is allowed to execute. Therefore, the

rejection of claims 8, 48, and 53 over McGee and Pitzel, in Grounds of Rejection I, should be

overturned for at least these additional reasons.

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[3] *See* 06-23-2010 Examiner's Answer at page 19. .

Applicant : Jonathan D. Herbach, et al.   Attorney's Docket No. 07844-0622001 / P571
Serial No. : 10/699,520
Filed   : October 31, 2003
Page   : 4

Claims 16-18, 20, 22, 31-33, 35, and 37-38

In the Examiner's Answer of June 23, 2010, the Examiner now introduces the word

"dynamically" in addition to "automatically".[4] Initially, it should be noted that "dynamically",

"automatically" and "transparently" are each different words with different meanings, and the

Appellant's use of the words "dynamically" and "transparent" in paragraph 68 (as noted by the

Examiner) is not inconsistent with the previously presented arguments. The Examiner notes the

Appellant's indicated support for claim 16:[5]

> The client 1610 can force a user to view the second document 1650 based
> on the information 1655. For example, the second document 1650 can be a later
> version of the first document 1640, and the information 1655 can include
> document-permissions information specifying that the action is not permitted
> with respect to the first document 1640. The first document 1640 can be replaced
> with the second document 1650 (e.g., opened in place of the first document
> and/or written to storage over the first document) by the client 1610, including
> potentially without the knowledge of the user.

The Examiner then concludes by stating, "This process does not appear either to be different

from Examiner's Official Notice taken by the Examiner."[6] However, this is not correct.

This "process" and the claim language clearly indicates that the distributed document is

closed and the second document is opened in its place, without the knowledge of the user. In

stark contrast, the Examiner's Official Notice is merely that, "in Windows application to perform

an upgrade, the old version of the application is closed, upgraded, then the new version is

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[4] See 06-23-2010 Examiner's Answer at page 19.

[5] See Specification at page 39, lines 17-23, cited in 06-23-2010 Examiner's Answer at pages 19-20 (emphasis added).

[6] See 06-23-2010 Examiner's Answer at page 20.

subsequently opened automatically."[7] Nothing in this Official Notice indicates that the old

version of the application is closed, and the new version is opened, transparently, i.e., without the

knowledge of the user. Thus, the Official Notice is deficient on its face to reject the subject

matter of claim 16. Similar reasoning applies to independent claim 31 and the claims dependent

from claims 16 and 31. Therefore, for at least the above reasons, the rejection of claims 16-18,

20, 22, 31-33, 35, 37, and 38 over McGee (i.e., Grounds of Rejection II) should be overturned.

Claims 20 and 35

Dependent claims 20 and 35 recite, "transparently overwriting the distributed document

with the second document." The cited portions of McGee[8] say nothing about overwriting, as

claimed, and upgrading to a new version of a program does not implicitly include transparently

overwriting a distributed document as recited in these claims. The Examiner's Answer of June

23, 2010, fails to address this point, but rather merely states that upgrading to a newer version

includes replacing the old version.[9] This assertion fails to address the transparent aspect of the

claimed overwriting. Thus, the rejection of claims 20 and 35 over McGee, in Grounds of

Rejection II, should be overturned for at least the above reasons.

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[7] See 06-23-2010 Examiner's Answer at page 15.
[8] See McGee at col. 2, lines 35-41, and col. 12, lines 45-63.
[9] See 06-23-2010 Examiner's Answer at page 20.

Applicant : Jonathan D. Herbach, et al.
Serial No. : 10/699,520
Filed : October 31, 2003
Page : 6

Attorney's Docket No. 07844-0622001 / P571

<u>Claims 9, 10, 28, 29, 54, and 55</u>

Claims 9, 28, and 54 recite, "wherein the distributed electronic document is a stub document identified as outdated when originally sent for distribution."[10] McGee fails to teach or suggest this subject matter. In the Examiner's Answer of June 23, 2010, the Examiner states:[11]

> [T]he claim may be broadly and reasonably interpreted as upon detection that new program is released, the old or original version is identified as outdated when it was originally sent for distribution[;] the identifying is not required to take place at the time of distribution.

This interpretation of the claim language defies common sense. First, the claim language clearly states that the stub document is <u>identified as outdated when originally sent for distribution</u>. The new claim interpretation by the Examiner directly contradicts the language of the claim itself. Second, the new claim interpretation by the Examiner is inconsistent with the Specification.[12] Thus, far from being a reasonable interpretation, it is clearly an unreasonable interpretation of the claim language.[13]

Finally, the import of the Examiner's statement that "the claim does not recite an update version being available when the document was originally sent for distribution"[14] is not understood. Whether or not an "update version" is available at the same time has no impact on the stub document being identified as outdated when originally sent for distribution. In fact, the

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[10] *See e.g.,* Specification at page 39, line 27, to page 40, line 12.

[11] *See* 06-23-2010 Examiner's Answer at pages 20-21

[12] *See e.g.,* Specification at page 40, lines 3-9.

[13] *See e.g., In Re Suitco Surface, Inc.,* 2010 WL 1462294, *4 (Fed. Cir. 2010) (explaining that the broadest reasonable interpretation must be consistent with the specification, and explaining that the broadest construction rubric does not give the PTO "an unfettered license to interpret claims to embrace anything remotely related to the claimed invention" and "claims should always be read in light of the specification and teachings in the underlying patent.").

[14] *See* 06-23-2010 Examiner's Answer at page 20.

Applicant : Jonathan D. Herbach, et al.   Attorney's Docket No. 07844-0622001 / P571
Serial No. : 10/699,520
Filed   : October 31, 2003
Page   : 7

Examiner's argument here appears to disregard the actual teachings of the present application, where it is clearly stated that:[15]

> The document 1650 can be customized for a particular user, the user's location and/or the user's time of access (e.g., the document 1640 can be a stub document that is already identified as outdated when sent, and when this stub document is opened, each user can automatically receive <u>a new document generated specifically for that user at the time of the access attempt</u>, i.e., the stub document looks like and can be manipulated as a regular document in an operating system, but is always current when opened while online).

As this makes clear, the fact that the stub document is identified as outdated when originally sent for distribution does not mean that the document to be provided in place of the stub document has to already exist at the time the stub document is indicated as outdated. To the contrary, the fact that a replacement document need not be specified at that time, in some implementations, is a potential advantage of the claimed subject matter.

Claims 10, 29 and 55 depend from claims 9, 28 and 54, respectively. Thus, for at least the above reasons, the rejection of claims 9, 10, 28, 29, 54, and 55 over McGee, Pitzel and Bierbrauer (i.e., Grounds of Rejection III) should be overturned.

Claims 10, 29, and 55

Claims 10, 29, and 55 recite generating "at least a portion of the second electronic document based on the identified user." The Office cites to column 8, line 64 through column 9,

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[15] *See e.g.,* Specification at page 40, lines 3-9 (emphasis added).

Applicant : Jonathan D. Herbach, et al.   Attorney's Docket No. 07844-0622001 / P571
Serial No. : 10/699,520
Filed   : October 31, 2003
Page   : 8

line 15; column 9, lines 54-65; and column 10, lines 2-12 of Pitzel.[16] However, as noted in the Appeal Brief, these portions of Pitzel provide no disclosure at all that can be considered to correspond to generating at least a portion of the second electronic document based on the identified user, as claimed. In response to this point, the Examiner repeats the response given for claim 2.[17] However, as addressed above, the "user identification number" in Pitzel corresponds to the client "user" computer, not an identified user at the client computer.

Moreover, the "client conditions" in Pitzel are used to determine which pre-existing components to download to a computer for an upgrade.[18] They are not used to generate those components based on an identified user. Thus, for at least the above reasons, the rejection of claims 10, 29, and 55 over McGee, Pitzel and Bierbrauer, in Grounds of Rejection III, should be overturned.

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[16] *See* 06-23-20 10 Examiner's Answer at page 17.

[17] *Cf* 06-23-2010 Examiner's Answer at pages 18 and 21.

[18] *See e.g.,* Pitzel at col. 9, lins59-65.

Conclusion

For the above reasons, and the reasons stated in the Appeal Brief, the final rejection

should be reversed.

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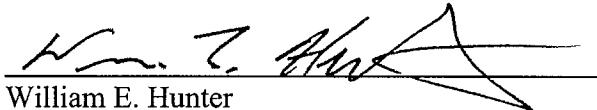
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